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PECFA UPDATE #9

Notice of Eligible Costs

and

DILHR Form 4-A

Dear Consultant and PECFA Participants,

Two important and timely topics have generated a lot of questions recently and this notification will attempt clarify the Department's positions regarding these issues. The topics are; methonal preservation and confirmation analysis and the self implementing progress payment certification.

Confirmation of Contamination and Methonal Preservation

Wisconsin Department of Natural Resources (DNR) anticipates adoption of §NR 720 in the fall of 1995. §NR 720 contains language that requires confirmation of contamination levels that are between the level of detection and the limit of quantitation. Resampling must be performed to confirm analytical results that are between the aforementioned levels. The problems and costs of resampling are reduced if the original samples include duplicates preserved in methonal. The Department (DILHR) believes that it is in the best interest of the PECFA fund to reimburse for methonal preservation rather than returning to the field to resample. **As of April 1, 1995, methonal preservation of PECFA eligible samples and required confirmation of PECFA eligible contamination is a cost eligible for reimbursement by the PECFA fund.** The Department recognizes that a laboratory bid currently in place may not include methonal preservation or confirmation analysis. The Department is not requiring resoliciting bids. However, when new annual laboratory bids or site specific laboratory bids are solicited after April 17, 1995, methonal preservation and confirmation analysis must be included.

Listed below are DNR and DILHR publications that discuss this topic.

DNR, LUST Analytical Guidance, July 1993,
DNR, Release News, July 1994, October 1994 and March 1995,
DILHR, PECFA Update #6, December 1994.

DILHR Form 4-A

As expected, the PECFA staff have received phone calls regarding the new Form 4-A. Most of these calls focus on the words “certify” and “complete”. Although the form is new the requirement to verify the completion of the investigation phase is not. Claimants in the past signed Form 1 stating that the investigation was “complete”. In addition, the old Form 4, signed by the DNR, also stated that the investigation was “complete”.

§ILHR 47.34(2)(a) *Awards*, requires completion of a site investigation, and this includes the full definition of the vertical and horizontal extent of the contamination. Because of staff limitations, the DNR will no longer lend their expertise to verify that the investigation and remedial plan phase have been completed. Consequently, this responsibility must be handled by those persons most knowledgeable of a site - the consultant and the claimant.

The certification provided at the time of investigation completion is not intended to limit the DNR's ability to require a level of work to obtain site closure. If the DNR requires additional site work to approve site closure, these costs will be reviewed for eligibility during review of the claim. Similarly, if the DNR requires additional work to verify that an investigation fully defined the degree and extent of contamination, these costs would also be reviewed for eligibility. (A requirement to redo substandard or incompetent work would be declared non-eligible in the same way that it currently is.)

In the past, the PECFA program has experienced some problems with environmental firms reporting a completed investigation and remedial plan when only part of the contamination is identified or addressed within the remedial alternative selected. These partial actions are not consistent with the Chapter ILHR 47 progress payment requirements or the cost cap on the investigation phase. They serve only to complicate the site and put the claimant at risk. The movement to the Form 4-A certification should serve to emphasize the need for completeness, provide the basis for progress payments and increase the flow of information to owners.

Thank you,

The PECFA Staff